

Retailers' Occupation Tax is imposed upon persons engaged in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. (This is a GIL).

March 10, 2000

Dear Xxxxx:

This letter is in response to your faxed letter dated January 21, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We have a retail client (retailer) with store locations in your state where they sell cellular telephones. The telephones are sometimes sold at regular price but mostly sold at a substantially reduced price (usually lower than cost) or given to the customer for no charge. The customer can qualify for the reduced price by signing up for cellular telephone service with a third party service providers (vendor). The retailer is not in the business of providing cellular telephone services. The vendor pays a commission type fee to the retailer when a customer buys a phone and signs up for their service. The agreement usually requires the customer to use the service for a certain length of time, typically one year. If the customer discontinues service before the agreement expires, they are charged a termination fee. This fee is paid to the vendor.

The retailer also sells personal computers under a similar scenario. The customer purchases the computer at a reduced price when they sign up for Internet access services with a third party Internet service provider. The retailer is not in the business of providing Internet access services. The facts for the computers are the same as the cellular telephones stated above.

THE QUESTIONS

1. Is the sale of a cellular telephone (or computer) sold at a price that is substantially lower than the cost of the phone to the retailer subject to sales tax and/or use tax? If yes, what is the taxable amount?
2. Is the sale of a cellular telephone (or computer) sold for free subject to sales tax and/or use tax? If so, what is the taxable amount?
3. Is the commission type payment from the vendor to the retailer subject to sales and/or use tax? If so, what is the taxable amount?

4. Is the termination fee charged to a customer subject to sales and/or use tax? If so, who collects and remits the tax since the payment is made to the vendor and not the retailer?
5. Sometimes the retailer offers a cash rebate to the purchaser. The customer is required to send in their receipt and proof of purchase to the retailer's home office in order to obtain the rebate. Is the rebate deductible from the amount subject to sales tax? Please note this is not a manufacturer rebate and the retailer is not reimbursed for this rebate.
6. Sometimes the retailer offers an instant cash rebate. No coupon or other paperwork is required for the customer to obtain the rebate, which is deducted at the point of sale. Is the rebate deductible from the amount subject to sales tax? Please note this is not a manufacturer rebate and the retailer is not reimbursed for this rebate.

Please inform us of the answers to the questions above. You may mail, fax, or e-mail your response to me at the above address, fax number, or e-mail address.

Enclosed is a copy of 86 Ill. Adm. Code 130.101 concerning the Character and Rate of Tax. Retailers' Occupation Tax is imposed upon persons engaged in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the sellers' gross receipts from sales of tangible personal property.

If retailers do not receive any money, even from their suppliers, when they give away cellular phones to customers, they are considered to be donors. As donors of the cellular phones, the retailers are the end users of the phones. Therefore, the retailers are subject to Use Tax on their cost price of the phones and therefore cannot charge their customers sales tax. The customers do not incur a legal obligation to pay any tax under these circumstances. The retailers either pay Use Tax to their suppliers or, if they make purchases from suppliers that do not collect Illinois Use Tax, self-assess their Use Tax liability and remit it directly to the Department. If retailers sell cellular phones to their customers, the retailers incur Retailers' Occupation Tax measured by the gross receipts from the sales. At the time the retailers purchase cellular phones from their suppliers for the purpose of resale, the retailers should supply Certificates of Resale to their suppliers. Then, when the retailers sell the cellular phones, the retailers will pay Retailers' Occupation Tax based on the amount they receive from their customers. This amount represents the gross receipts received from the sale of the cellular phone.

Please note that retailers should be very careful when computing the amount of gross receipts from their sales of cellular phones. Retailers incur Retailers' Occupation Tax on their gross receipts from retail sales. Gross receipts are defined as all the consideration actually received by a seller from whatever source, except traded-in tangible personal property. See the enclosed copy of 86 Ill. Adm. Code 130.401. If sellers receive a reimbursement or rebate from any other source, the amount of

that reimbursement or rebate is considered part of the gross receipts received by those sellers and is fully taxable.

If retailers offer discounted prices for items and do not receive any reimbursement or rebate for those discounts, the lower amounts received for those items would be the retailers' gross receipts for those sales. The retailers would incur Retailers' Occupation Tax on those lower amounts and the purchasers would pay the corresponding Use Tax to the retailers based upon those same amounts. See the enclosed copies of 86 Ill. Adm. Code 130.420, Discounts, and 130.2125, Trading Stamps and Discount Coupons.

If the money retailers receive from cellular service providers is the equivalent of a reimbursement for the rebate or discount offered to the consumer, then this amount is included in gross receipts and is taxable. However, if the money retailers receive from cellular service providers represents compensation based on a percentage of an amount agreed to be paid for every activation, it is not subject to sales tax. Please note that this compensation is subject to income tax.

The retailers are also required to collect a complementary Use Tax liability from their customers when sales of the cellular phones occur. Enclosed is 86 Ill. Adm. Code 150.130 concerning Accounting for the Tax, which explains this provision. The tax should be listed as a separate item from the selling price of the equipment and not as an administration or service charge. See 86 Ill. Adm. Code 150.135, enclosed.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.